IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 3RD JANUARY 2007 / 13TH POUSHA, 1928

WP(C).No. 14291 of 2006()

AGAINST THE ORDER IN IA 1033/06 & IA 1035/06 IN OS.81/2006 of III ADDL.SUB COURT, KOZHIKODE

.....

PETITIONER:

T. ASOKAN, 51 YEARS,
S/O. LATE KUNHIKANDAN, CONTRACTOR,
PATTALIL VEEDU, CHELAVOOR AMSOM DESOM,
KOZHIKODE TALUK & DISTRICT.

BY ADV. SRI.P.N.KRISHNANKUTTY ACHAN(SR.)
SRI.K.MOHANA KANNAN

RESPONDENTS:

1. STATE OF KERALA-REP. BY THE
DISTRICT COLLECTOR, COLLECTORATE,
CIVIL STATION, KOZHIKODE-673 020.

2. THE CONSERVATOR & CUSTODIAN OF
VESTED FORESTS, EASTSERN CIRCLE, PALAKKAD.

3. THE DISTRICT FOREST OFFICER,
CIVIL STATION, CIVIL STATION COMPLEX,
KOZHIKODE-673 020.

4. FOREST RANGER, FOREST RANGE OFFICE
TAMARASSERY VILLAGE, KOZHIKODE TALUK,
KOZHIKODE DISTRICT.

5. SUNIL KUMAR, AGED AROUND 45 YEARS,
FORESTER, PODUPPADI SECTION,
FOREST RANGSE OFFICE, RESIDING AT
TAMARASSERY VILLAGE, KOZHIKODE TALUK,
KOZHIKODE DISTRICT.

6. SIVASANKARAN, AGED AROUND 40 YEARS,
FOREST GUARD, FOREST RANGE OFFICE,
RESIDING AT TAMARASSERY VILLAGE,
KOZHIKODE TALUK, KOZHIKODE DISTRICT.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF AFFIDAVIT AND PETITION FILED IN SUPPORT OF I.A.1033/06 DATED 1.3.06.

EXT.P2: TRUE COPY OF AFFIDAVIT AND PETITION FILED IN SUPPORT OF I.A.1035/06 DATED 1.3.06.

EXT.P3: TRUE COPY OF ASSIGNMENT DEED EXECUTED IN FAVOUR OF PETITIONER DATED 13.8.04.

EXT.P4: TRUE COPY OF POSSESSION CERTIFICATE DATED 16.11.04.

EXT.P5: TRUE COPY OF PATTA ISSUED BY LAND TRIBUNAL DATED 27.1.05.

EXT.P6: TRUE COPY OF SKETCH ISSUED BY TAHSILDAR, KOZHIKODE DATED 16.11.04.

EXT.P7: TRUE COPY OF COMMUNICATION ISSUED BY 3RD RESPONDENT DATED 8.3.05.

EXT.P8: TRUE COPY OF STATEMENT FILED BY RESPONDENTS 1 &2 IN I.A.1033/06.

EXT.P9: TRUE COPY OF NOTIFICATION ISSUED BY 2ND RESPONDENT DATED 8.7.77.

EXT.P10: TRUE COPY OF COMMON ORDER PASSED IN I.A.1033/06 AND IA1035/06

/TRUE COPY/

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.14291 OF 2006

DATED THIS THE 3rd DAY OF JANUARY, 2007

JUDGMENT

This petition is filed under Article 227 of Constitution of India challenging Ext.P10 order whereunder I.A.1035/06, an application for appointment of a commission was dismissed. Under Ext.P10 order, learned Sub Judge dismissed I.A.1033/06, an application filed under order XXXIX Rule 1 of Code of Civil Procedure for an order of temporary injunction. Petitioner filed C.M.A. 37/06 before District Court, Kozhikod challenging the dismissal of I.A.1033/06. I.A.17814/06 was filed in this petition to call for C.M.A. from District Court to be heard along with this petition. Ext.P10 order shows that learned Sub Judge mainly considered the question of granting an order of temporary injunction and not the Commission application as such.

2. The question whether a commission is to be appointed or not, for the purpose of considering the injunction application could be considered by learned Sub Judge at the time of hearing C.M.A. If the appointment of Commission is for the purpose of the suit, petitioner is at liberty to file an application for appointment of Commission in the suit. Dismissal of I.A.1035/06 under Ext.P10 order will not preclude

the petitioner from getting appointment of a commission in the suit. In such circumstances, I do not find any infirmity in Ext.P10 order or to call for C.M.A. to this Court or to interfere with Ext.P10 order with regard to the dismissal of I.A.1035/06.

Writ petition is disposed.

M.SASIDHARAN NAMBIAR,JUDGE

Acd